

**IN THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE TRIBUNAL
EASTERN ZONAL BENCH: KOLKATA**

REGIONAL BENCH – COURT NO. 2

Customs Appeal No. 76438 of 2025

(Arising out of Order-in-Original No. CCP/NER/20/2020 dated 17.11.2020 passed by the Commissioner of Customs (Preventive), 110, M.G. Road, Shillong, Meghalaya)

Shri Ajay Sarawagi

S/o Shri Hanuman Prasad,
R/o. Sweda Complex, 502, Near Athgaon, Gaushala,
Guwahati – 781 001 (Assam)

: Appellant

VERSUS

Commissioner of Customs (Preventive),

NER, 110, M.G. Road,
Shillong – 793 001 (Meghalaya)

: Respondent

APPEARANCE:

Shri Pranab Sikdar, Consultant, for the Appellant
Shri Faiz Ahmed, Authorized Representative, for the Respondent

CORAM:

HON'BLE SHRI R. MURALIDHAR, MEMBER (JUDICIAL)
HON'BLE SHRI K. ANPAZHAKAN, MEMBER (TECHNICAL)

FINAL ORDER NO. _____ / 2025

DATE OF HEARING: 21.11.2025

DATE OF PRONOUNCEMENT: 24.11.2025

ORDER: [PER SHRI K. ANPAZHAKAN]

Briefly stated facts of the case are that, acting on specific information that some contraband cigarettes and other foreign origin goods smuggled into the country are secreted in the premises, the Customs Officers of Anti-Smuggling Unit, Customs Division, Imphal entered the rented premises (godown) owned by Shri LaiphrakpamBira at LangthabalMakhaLeikai and enquired about one person named Shri Amarjit Sahu. The owner of the

premises was not present at that time. The Customs Officers carried out search of the premises in the presence of the two independent witnesses and Shri Amarjit Sahu. During the search, the officers found some HDPE bags containing cigarettes, cosmetics and electronic fireworks of foreign origin in the godown. Shri Amarjit Sahu could not produce any licit documents in support of legal possession/ transportation/ importation of the recovered goods. Shri Amarjit Sahu stated that he is not the owner of the goods and one Shri Ajay Sarawagi is the owner of the goods. Shri Amarjit Sahu called Shri Ajay Sarawagi on phone and informed him about the seizure of the contraband goods.

1.1. The bags recovered from the godown were taken to the Customs Divisional Office and detailed examination was conducted in the presence of two independent witnesses. On examination, the said bags were found to contain 10 cartons of GUDANG GARAM brand cigarettes of Indonesian origin, 50 cartons of BLACK brand cigarettes of Indonesian origin, 28 cartons of WIN brand cigarette of foreign origin, 5 cartons of electric fireworks with Chinese script and 20 packets of Strait Glatt Neutralizing Balm N 400 and Strait Glatt Hair Straightener 400 bearing Chinese script.

1.2. In his statement dated 02.03.2019 recorded under Section 107 of the Customs Act, 1962, Shri Amarjit Sahu stated that he is not the owner of the recovered goods and that one person by name, Shri Ajay Sarawagi of Guwahati is the owner of the recovered goods. He also stated that owner of the godown is Shri LaiphrakpamBira of LangthabalMakhaLeikai, Imphal West, and that they

were using the godown on hire basis to store some items belonging to Shri Ajay Sarawagi.

1.3. On 03.03.2019 at about 1340 hrs, Shri Ajay Sarawagi, S/o Shri Hanuman Prasad, resident of Balaji Niwas, Third Floor, R.K.C Road, Near Railway Gate No. 9, Bharalumuk, Kamrup Metro, Assam-781009 came to the Customs Divisional Office, Imphal. In his statement recorded on 03.03.2019 under Section 107 of the Customs Act, 1962 Shri. Ajay Sarawagi admitted that he is the owner of the seized contraband cigarettes, cosmetics and electric fireworks recovered from the said godown. On demand, he could not produce any licit documents in support of the importation/ transportation/ possession of the contraband goods. Accordingly, the said goods were seized under section 110 of the Customs Act, 1962, on the reasonable belief that they were smuggled into the country without payment of appropriate customs duty payable on such goods.

1.4. On 03.03.2019, Shri Amarjit Sahu and Shri Ajay Sarawagi were arrested under Section 104 of the Customs Act. They were produced before the Hon'ble Court of Duty Magistrate, Imphal Manipur. They were granted custody remand till 04.03.2019. On 04.03.2019 they were produced before the Hon'ble Court of CJM, Imphal West, Manipur and subsequently sent to Judicial remand.

1.5. On completion of investigation, a show cause notice dated was issued proposing confiscation of all the goods. On adjudication, the Ld. adjudicating authority vide Order in Original No. COM/CUS/ADDL COMMR/38/2016 dated 3/8/2016, absolutely confiscated the seized goods. He also *inter alia*

imposed a penalty of Rs.12 lakhs on Shri. Ajay Sarawagi (the Appellant herein) under Section 112(b)(i) (ii) of the Customs Act, 1962.

1.6. Aggrieved against the penalty imposed on him, the Appellant has filed this appeal.

2. The Appellant submits that he had no connection whatsoever with the seized goods. On 03.03.2019, he came to know that his friend Shri Amarjit Sahu was detained by Customs Officers and came to the Customs office on his own, to seek release of his friend. The Customs officers informed him that he had to be taken into custody to facilitate further investigation of the case where contraband cigarettes and some other foreign origin goods were seized from a godown. Even though he resisted, the officers overpowered him and taken him into custody. In his written statement taken under such circumstances, he admitted that he was owner of the contraband goods. However, he has retracted his statement vide his letter dated 06.03.2020 addressed to the Adjudicating Authority, wherein he has categorically denied to have made any voluntary statements at the time of seizure. It is his submission that he had merely signed some documents that were placed before him and were directed to sign by the officers and such signatures did not reflect any voluntary admission on his part. The Appellant submits that he was wrongfully detained and forced to sign multiple documents, including blank sheets, without being informed of their contents.

2.1. The Appellant submits that the statements under Section 107 of the Customs Act were recorded from him on 03.03.2019 and from the co-accused,

Shri Amarjit Sahu, on 02.03.2019, at a time when both were in custody and formally arrested on 03.03.2019. No further statements were recorded thereafter that could qualify as voluntary. Statements obtained while an accused is in custody are inherently involuntary and, in the absence of independent corroboration, they are inadmissible in law.

2.2. The appellant submits that he had neither hired any godown nor has any acquaintance with the owner of the said godown, Shri Laiphrakpam Bira. Further, he has no knowledge of or involvement with the seized goods. The Appellant submits that there is no evidence whatsoever that the go down from which goods was recovered was hired, occupied, or controlled by him. No tenancy document, lease record, or witness statement links him to the premises. Even the owner's statement was not recorded to verify whether the godown was let out at all and, if so, to whom. In the absence of such basic verification, the allegation that the recovered contraband belonged to him is not substantiated with any evidence.

2.3. Regarding the penalty imposed on him, the appellant submits that no penalty under Section 112(b)(i) & (ii) of the Customs Act, 1962 is imposable when the case rests solely on custodial and retracted statements obtained under coercive circumstances, without any independent or corroborative evidence. Accordingly, the Appellant prayed for setting aside the penalty imposed on him under Section 112(b)(i) & (ii) of the Customs Act, 1962.

2.4. In support of his contention that the statement of the co-accused is not maintainable, without any independent corroborative evidence, the Appellant relied on the following decisions:

(i) *Mohtesham Mohd. Ismail v. Special Director, Enforcement Directorate* - 2007 (220) E.L.T. 3 (S.C.) = [2007] 79 SCL 611 (SC).

(ii) *Prakash Kumar v. State of Gujarat* - (2007) 4 SCC 266.

(iii) *Assistant Collector of Customs v. Amrik Singh* - 2014 (301) E.L.T. 170 (P & H).

(iv) *AnisurRahaman v. Commissioner of Customs (Prev.), West Bengal* - 2003 (160) E.L.T. 816 (Tri. - Kolkata).

(v) *Jahed Mondal v. Commissioner of Customs (Prev.), West Bengal* - 2002 (149) E.L.T. 319 (Tri. - Kol.) = 2002 taxmann.com 1885 (CEGAT - Kol.).

3. The Ld. A.R. reiterated the findings in the impugned order. He submitted that cigarettes are notified under Section 123 (2) of the Customs Act, 1962 vide Notification No. 103/2016-Customs (NT) dated 25.07.2016. Hence, the onus to prove that the goods under seizure are not smuggled rests with the Appellant Shri Ajay Sarawagi and Shri Amarjit Sahu. As they have failed to discharge this liability and could not produce any documents to prove that the seized goods were legally imported, the adjudicating authority has rightly confiscated the impugned goods and imposed penalty *inter alia* on the Appellant. Accordingly, he justified the penalty imposed on the Appellant.

4. Heard both sides and perused the appeal documents and submissions made by both the sides.

5. In the present appeal we find that the Appellant has prayed only for setting aside the penalty imposed on him. The Appellant is not contesting the confiscation of the impugned goods. Thus, we only examine the role of the Appellant herein in the alleged offence and the evidence available on him to implicate him in the alleged offence. Consequently, we will examine whether the penalty imposed on the Appellant in the impugned order is sustainable or not.

5.1. At the outset, we would like to examine the claim made by the Revenue that cigarettes are notified under Section 123 (2) of the Customs Act, 1962 vide Notification No. 103/2016-Customs (NT) dated 25.07.2016 and hence the onus to prove that the impugned goods under seizure are not smuggled rests with the Appellant Shri Ajay Sarawagi and Shri Amarjit Sahu. In this regard, we would like to examine the provisions of section 123 of Customs Act, 1962. For ready reference, the said section is reproduced below:

Section 123. Burden of proof in certain cases:

(1) Where any goods to which this section applies are seized under this Act in the reasonable belief that they are smuggled goods, the burden of proving that they are not smuggled goods shall be-

(a) in a case where such seizure is made from the possession of any person,-

(i) on the person from whose possession the goods were seized; and

(ii) if any person, other than the person from whose possession the goods were seized, claims to be the owner thereof, also on such other person;

(b) in any other case, on the person, if any, who claims to be the owner of the goods so seized.]

(2) This section shall apply to gold, [and manufactures thereof], watches, and any other class of goods which the Central Government may by notification in the Official Gazette specify.

5.2. A perusal of section 123 of the Customs Act, 1962, reproduced above reveals that in respect of the goods notified under the said section, the onus to prove that the said goods are not smuggled rests with the person who claims the ownership of the goods. Cigarettes is a notified item, which is also under seizure in this case. Thus, the ownership to prove that the said goods are not smuggled rests with the Appellant, if he claims the ownership of the goods. In the present case, we find that the Appellant categorically said that he was not the owner of the said goods. It is on record that the Appellant admitted that he was the owner of the goods in his statement recorded under Section 107 of the Customs Act on 03.03.2019, when he was under custody of the Customs officers. He was formally arrested on 03.03.2019 and no further statement was recorded thereafter that could qualify as voluntary. In this regard, we agree with the submission of the Appellant that the statement obtained while an accused is in custody are inherently involuntary. In the absence of any independent corroboration, they are inadmissible in law. Thus, we find that other than his own statement and the statement of the co-accused Shri, Amarjit Sahu, there is no other evidence to implicate that the Appellant was the owner of the goods. Thus, we observe that the ownership of the goods has not been claimed by the Appellant. On the contrary, the ownership has been thrust on him. Thus, we hold that the provisions of section 123 of the Customs Act

are not applicable in this case, as the Appellant has not claimed the ownership of the impugned goods.

6. In order to examine the role of the appellant in the alleged offence, it is required to examine the sequence of events that led to the seizure of the impugned goods. The sequence of events as narrated in the show cause notice are as under:

- on the basis of specific information that some contraband goods are secreted inside, the officers of customs visited the rented premises (godown) owned by Shri LaiphrakpamBira and enquired about Shri. Amarjit Sahu only;

- Shri Amarjit Sahu was the only person available in the godown;

- The owner of the premises was not present at that time;

- During the course of search, the officers found some HDPE bags containing cigarettes, cosmetics and electronic fireworks of foreign origin in the godown;

- Shri Amarjit Sahu stated that he is not the owner of the goods and one Shri Ajay Sarawagi is the owner of the goods;

- Shri Amarjit Sahu called Shri Ajay Sarawagi on phone and informed him about the seizure of the contraband goods;

- On 03.03.2019, he came to know that his friend Shri Amarit Sahu was detained by Customs Officers;

- in the statement recorded from the Appellant, when he was under custody, he has stated that he was the owner of the impugned goods, which he retracted later.

6.1. Analysis of the events narrated above indicates that the officers visited the rented premises with no specific information that the Appellant was the owner of the goods available in the godown. This is evident from the fact that on entry of the premises, the officers have not enquired about the Appellant and they enquired about Shri. Amarjit sahu only. In fact, the search warrant issued was not in the name of the Appellant. The search was conducted in the presence of Shri. Amarjit Sahu and independent witnesses and neither the Appellant nor the owner of the premises was present at the time of search and recovery of the impugned goods. The Appellant's name was brought in the picture only by the co-accused person Shri. Amarjit sahu. Thus, we observe that till Shri. Amarjit Sahu implicate the Appellant as the owner of the said goods, the officers have no information about the Appellant. Shri, Amarjit Sahu contacted the appellant over phone and informed about the seizure of the goods by the officers. According to the Appellant, he came to seek release of his friend to the Customs Division office, where he was detained by the officers. It is the submission of the Appellant that he was wrongfully detained and forced to sign multiple documents, including blank sheets, without being informed of their contents. By common prudence, a guilty person would never expose himself by voluntarily approaching the very authorities conducting the seizure to facilitate punitive action. Thus, we find merit in the argument of the Appellant that he has visited the Customs Division office on his own, without having any iota of doubt that he would be arrested.

6.2. The Appellant submits that from the statement of the co-accused, it would be evident that such

statement was inculpatory in nature and a dire attempt on the part of the said apprehended person/co-accused to shrug of his responsibilities with respect to the goods recovered from the godown. Such an exculpatory statement of co-accused, in absence of any independent corroboration, cannot form the sole basis for imposition of penalty upon the appellant.

6.3. In support of the above view, we rely upon the following decisions :

(i) *Mohtesham Mohd. Ismail v. Special Director, Enforcement Directorate - 2007 (220) E.L.T. 3 (S.C.)*
= [2007] 79 SCL 611 (SC).

That a confession of a co-accused person cannot be treated as substantive evidence and can be pressed into service only when the Court is inclined to accept other evidence and feels the necessity of seeking for an assurance in support of the conclusion deducible therefrom. A confession purported to have been made before an authority would require a closure scrutiny. It is therefore, now well settled that the Court must seek corroboration of the purported confession from independent sources.

(ii) *Prakash Kumar v. State of Gujarat - (2007) 4 SCC 266.*

The confession of co-accused by itself is not sufficient to hold the other accused guilty. It has been held repeatedly by this Court that the confession of a co-accused is a fragile and feeble type of evidence and it could only be used to support the other evidences, if any, adduced by the prosecution.

(iii) *Assistant Collector of Customs v. Amrik Singh - 2014 (301) E.L.T. 170 (P & H).*

The question arises whether the admission of co-accused under Section 108 of the Customs Act can be basis of conviction of other co-accused. The Ld. Trial Court has rightly held that statement of co-accused under Section 108 of the Act against the co-accused with a weak type of evidence and conviction of co-accused cannot be based on the uncorroborated statement of co-accused.

(iv) *AnisurRahaman v. Commissioner of Customs (Prev.), West Bengal - 2003 (160) E.L.T. 816 (Tri. - Kolkata).*

Non-appearance before DRI Officer in response to summons is not a ground for holding that the appellant is guilty - The entire case is based upon the statement of the Driver which is in the nature of uncorroborated statement of a co-accused and cannot be made the sole basis for penalizing the appellant.

(v) *Jahed Mondal v. Commissioner of Customs (Prev.), West Bengal - 2002 (149) E.L.T. 319 (Tri. - Kol.) = 2002 taxmann.com 1885 (CEGAT - Kol.)*

Penalty has been imposed upon Shri Jahed Mondal based upon the statement of Bablu Biswas who was intercepted by the Customs Officer from whose possession one gold biscuit has been recovered. Penalty cannot be imposed on the basis of confession of co-accused unless corroborated by other evidences. Non-appearance in response to Summons cannot be a factor or criteria in determining the guilty conduct of the appellant.

(vi) *Narayan Das v. Commissioner of Customs, Patna - 2004 (178) E.L.T. 554 (Tri. - Kolkata)*

6.4. Thus, we hold that mere inculpatory statement of the co-accused about ownership of the goods cannot be the basis for implicating the Appellant in the alleged offence and imposing penalty on him under Section 112(b) of the Customs Act, 1962. In view of the above decisions, we hold that the statement of the co-accused cannot be relied upon to implicate the appellant in the alleged offence, without any independent corroborative evidence.

7. Regarding availability of independent evidence other than the statement of the co-accused, we find that the Appellant had stated that he neither hired the said godown nor has any acquaintance with the owner of the said godown, Shri Laiphrakpam Bira. In this regard, we observe that the investigation could have ascertained from the owner of the godown about the person who had hired the godown and deposited the said goods in the godown. We find that no such verification was done by the investigation officers with the godown owner. We find that no tenancy document, lease record, or witness statement linking the Appellant to the premises and the impugned goods have been brought on record by the investigation. Even the owner's statement was not recorded to verify whether the godown was let out at all and, if so, to whom. Such verification from the owner of the godown would have acted as an independent evidence in this case. In the absence of such basic verification, we hold that the allegation that the recovered contraband belonged to Appellant is not substantiated with any evidence.

8. Regarding the penalty imposed on the appellant, we observe that no penalty under Section 112(b)(i) & (ii) of the Customs Act, 1962 is imposable when the case rests solely on custodial and retracted statements obtained under coercive circumstances, without any independent or corroborative evidence. The appellant's alleged involvement is based only on involuntary statements recorded while in custody, which both the Appellant and Shri Amarjit Sahu have expressly denied. With no verification of the godown owner, no proof of conscious possession of the godown by the Appellant and no independent inquiry such as call-detail analysis, we hold that the penalty imposed on the Appellant is legally unsustainable. Accordingly, we set aside the penalty imposed on the Appellant under Section 112(b)(i)&(ii) of the Customs Act, 1962.

9. In the result, we set aside the penalty imposed on the Appellant under Section 112(b)(i)&(ii) of the Customs Act, 1962 and allow the appeal filed by him with consequential relief, if any, as per law.

(Order Pronounced in Open court on 24.11.2025)

(R. MURALIDHAR)
MEMBER (JUDICIAL)

(K. ANPAZHAKAN)
MEMBER (TECHNICAL)